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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re D. R., a Person Coming Under the
Juvenile Court Law.

B259616
(Los Angeles County
Super. Ct. No. TJ19907)

THE PEOPLE,

Plaintiff and Respondent,

v.

D. R.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Gibson W. Lee Judge. Affirmed as modified.

Gerald Peters, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

The sole issue in this appeal is whether the trial court erred in calculating predisposition custody credits on the minor's present petition under Welfare and Institutions Code section 602. Respondent concedes the error. We agree, remand for modification of the adjudication order and the abstract of judgment to reflect the correct number of predisposition custody credits, and otherwise affirm the court's order.

FACTUAL AND PROCEDURAL SUMMARY

The Petition

A Welfare and Institutions Code section 602 petition filed in September 2014 alleged that the minor, D.R., committed the crime of second degree robbery of Dayny Sanchez in violation of Penal Code section 211¹. It also alleged that the minor personally used a knife, a deadly and dangerous weapon (§12022, subdivision (b)(1)), which made the offense a serious felony within the meaning of section 1192.7, subdivision (c)(23).

The Adjudication Hearing

A. Prosecution Evidence

On the evening of September 7, 2014, Sanchez was skateboarding in a park in the vicinity of 62nd and Normandie Avenue in Los Angeles. He went into a restroom and encountered a group of about 15 males. One of them checked Sanchez's pockets and took his cell phone. The victim identified the minor as the person who pulled out a knife and held it by his (the minor's) side near his right hip. The minor was wearing a beanie. The robber who took Sanchez's cell phone also took Sanchez's wallet. At the adjudication, Sanchez was not sure whether he told a police officer that the minor with the knife ordered him "let it go" or "I'll stab you."² Sanchez heard someone say "Oh, give him his wallet back" and that "his Social Security [card was] in there." The person who took the wallet returned it to Sanchez. His phone was not returned.

Sanchez reported the robbery to his friends. They followed the robbers and flagged down a police car. Sanchez gave the police officers descriptions of both the

¹ Statutory references are to the Penal Code unless otherwise indicated.

² The responding police officer testified that Sanchez told him that the minor with the knife threatened to stab him if he did not comply.

person who took the items from him and the person with the knife. He and a friend accompanied the officers as they drove around the area in an effort to locate the robbers. They saw a group of males who split up and went in separate directions. Sanchez told the officers he saw the male who had held the knife during the robbery go toward the back of a house. The officers located the minor on a balcony upstairs at the rear of the house. The officers ordered the minor to come downstairs. He complied and the officers detained him. Sanchez identified the minor as the person who held the knife and wore a beanie during the robbery. The minor did not have Sanchez's phone on his person. The officers recovered a beanie and steak knife from the area where the minor was detained.

B. Defense Evidence

The minor denied robbing Sanchez. He testified that he encountered Sanchez after the robbery and instructed the robbers to give Sanchez his wallet back. He was detained while walking around looking for a friend. He denied ever touching the knife recovered by the police officers and said he had not been wearing a beanie on the day of the robbery.

C. Sentencing Hearing

The juvenile court sustained the petition, finding the allegation that the minor committed second degree robbery with the personal use of a deadly weapon to be true. The court ordered the minor to remain a ward of the court pursuant to Welfare and Institutions Code section 602. He was committed to the custody and control of the probation officer and placed in a camp community placement program for six months. The offense was declared to be a felony with a maximum period of commitment of eight years and eight months. The minor was awarded predisposition custody credits of 24 days. The minor filed a timely appeal from the court's order.

DISCUSSION

The minor argues, and respondent concedes, that the juvenile court failed to award the appropriate amount of predisposition custody credits. They reason that the maximum period of commitment identified by the court on the present petition, eight years and eight months, exceeds the applicable maximum credit for the present offense, with the

personal use enhancement. The maximum confinement for the current offense is five years (the upper term for second degree robbery, § 213, subd. (a)(2)) plus one year for the weapon enhancement (§ 12022, subd. (b)(1)) for a total of six years. This suggests the court aggregated the minor's other sustained petitions to determine the maximum period of confinement under Welfare and Institutions Code section 726, subdivision (d)(3)³. (*In re Stephon L.* (2010) 181 Cal.App.4th 1227, 1232.)

A previous petition filed against the minor on February 21, 2013, alleged he had committed vandalism with damage valued over \$400 in violation of section 594, subdivision (a) for the benefit of a street gang (§ 186.22, subd. (b)(1)(A)). The minor admitted the vandalism offense and the gang enhancement. The court sustained the petition in April 2013.⁴ A previous order of home on probation remained in full force and effect. The court determined the maximum period of confinement was five years, and awarded 26 days of predisposition credit. For purposes of aggregating the terms of confinement for disposition of the present offense (Welf. & Inst. Code, § 726, subd. (d)(3)) in September 2014, the maximum term of confinement on the February 2013 petition was eight months on the vandalism charge (one-third the midterm of 2 years, §§ 594, subd.(a), 1170.1, subd. (a)) and one year on the gang enhancement (one-third the midterm of three years, §§ 186.22, subd. (b)(1)(A), 1170.1, subd. (a)), for a total of one year and eight months.

Another previous petition under Welfare and Institutions Code section 602 filed on December 20, 2013 alleged the minor committed second degree robbery (§ 211). He admitted the allegation and the court sustained the petition in January 2014. For purposes of aggregating the periods of confinement under Welfare and Institutions Code section

³ Welfare and Institutions Code section 726, subdivision (d)(3) authorizes the juvenile court to aggregate the period of physical confinement on multiple petitions, including previously sustained petitions adjudging the minor a ward within the meaning of Welfare and Institutions Code section 602. The court did not expressly state that it was doing so at the hearing.

⁴ A second count for possession of aerosol paint or etching cream with intent to deface was dismissed.

726, subdivision (d)(3), the maximum period of confinement for that offense was one year (one-third the midterm of three years, §§ 213, subd. (a)(2), § 1170.1, subd. a).

As respondent argues, these aggregated periods of confinement, totaling two years and eight months, plus the six year maximum term on the present offense, total the eight years and eight months maximum period of confinement determined by the court in this case.⁵

Where a juvenile court has aggregated the minor's period of physical confinement on multiple petitions, the court must also aggregate the predisposition custody credits attributable to those multiple petitions. (*In re A.M.* (2014) 225 Cal.App.4th 1075, 1085-1086; *In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.) Here the court failed to give the minor credit for the 26 days of custody credited awarded in the disposition of the February 2013 petition. Respondent concedes that the correct predisposition custody award on the present petition should have been 50 days, representing 24 days on the present petition and 26 days on the February 2013 petition. We agree.

⁵ An earlier petition filed on February 28, 2012 alleged that the minor had committed first degree burglary in violation of section 459. The minor admitted the allegation and the petition was sustained by the juvenile court, who declared that the offense was a felony. For purposes of aggregating the maximum period of confinement on the present offense, the maximum period of confinement for that offense was two years (§§ 461, subd. (a), 1170.1, subd. (a)). Since the juvenile court's aggregated period of maximum confinement on the present petition was eight years and eight months, it appears that the court relied on the other two prior petitions rather than the February 2012 petition in calculating that period.

DISPOSITION

The September 30, 2014 adjudication order is affirmed but remanded to the juvenile court with directions to modify the order to reflect 50 days of actual predisposition custody credits to be credited against the minor's maximum period of physical confinement. The juvenile court is directed to prepare an amended commitment order and to forward a certified copy thereof to the camp in which the minor was ordered placed.

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COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.